

Application Serial Number 10/051,588  
Reply to the Office Action of March 18, 2005

**REMARKS**

Claims 1-16 were examined. Upon entry of the present amendment, claims 1, 9, 11 and 14 are amended and claim 17 is added to more particularly claim Applicant's invention. Claims 18 and 19 are added to present the subject matter of allowable dependent claims 6 and 7 in independent form. No new matter is added by the present amendment. Applicant hereby requests further examination and reconsideration of the application in view of the following remarks.

Claims 1, 5 and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Reckwerdt et al., U.S. Patent No. 5,673,300 ("Reckwerdt"). Claims 2 and 3 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Reckwerdt. Claims 4 and 9-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Reckwerdt in view of Cosman, U.S. Patent Pub. No. US 2004/0138556 A1 ("Cosman"). Applicant has amended independent claims 1, 9, 11 and 14 to more particularly claim the invention. Applicant traverses the rejections of claims 1-5 and 8-16 for at least the following reasons.

Independent Claims 1, 9, 11 and 14 recite that "the one or more images being of the skin surface of the patient." As disclosed in Applicant's specification, images may be based upon extracted skin information. Specification, page 12, line 16. Further, the skin surface may be extracted from the CT data and rendered in three dimensions so that the three-dimensional surface substantially mimics a surface of the patient's body. Specification, page 12, lines 17-19. New claim 17 further recites that "the one or more images of the patient in the second position comprises a video image captured by a camera"

Reckwerdt fails to disclose, teach or suggest using CT data to create one or more images of the patient in the first position, the one or more images being of the skin surface of the patient. Instead, Reckwerdt teaches a method of correcting for patient misalignment which involves using "raw projection data from the CT image, rather than the reconstructed image itself." Reckwerdt, col. 2 lines 14-20. Nowhere does Reckwerdt disclose that the images are based upon extracted skin information. As the Patent Office is aware, anticipation cannot be established when the prior art is lacking or missing a specific

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feature of the claimed invention. Reckwerdt is lacking using CT data to create one or more images of the patient in which the one or more images being of the skin surface of the patient. Accordingly, Applicant respectfully requests the withdrawal of the rejection under 35 U.S.C. §102(b) and allowance of claim 1 and the claims which depend there from, claims 2-8 and 17.

With respect to claims 9 through 16, the Patent Office correctly notes that "Reckwerdt does not expressly provide for one or more video cameras located in the area where the patient is to receive radiotherapy treatment, where one or more cameras acquiring one or more images of the patient in a second position." Office Action dated March 18, 2005. In addition, the Patent Office notes that Reckwerdt also fails to provide "one or more video cameras placed to create a set of stereo video images of the patient in the second position, and the use of a set of stereo goggles which are synchronized with the stereo video images of the patient in the second position to give three-dimensional stereo perception." The ancillary reference, Cosman, is relied upon for these teachings. However, Cosman fails to disclose, teach or suggest creating a CT image of the patient's body and more particularly, that the image is formed from extracted skin information from the patient's body. Instead, Cosman teaches using a video camera to perform a surgical operation. Specifically, Cosman discloses "a system and a method for medical instrument navigation by optically tracking the positions of instruments used during surgery." Cosman, paragraph [0002]. Further, one method of tracking includes the use of index markers on the medical instrument allowing the camera to detect the position of the medical instrument. Cosman, paragraph [0008]. Nowhere does Cosman disclose creating a one or more images from CT data of the patient's body, the images being of the skin surface of the patient.

Moreover, there exists no suggestion or motivation from Reckwerdt, Cosman, or the prior art in general, to modify the references' teachings to provide the limitation of creating a CT image of the patient's body and more particularly, that the image is formed from extracted skin information from the patient's body. First, there is no motivation to combine Reckwerdt with Cosman as the references are grouped in different classes (Reckwerdt 378/65 and Cosman 600/424). Further, such references have no common

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feature or purpose as Reckwerdt is directed to a method of aligning a patient for radiation treatment, while Cosman is directed to using a video camera for performing a surgical operation. As the Patent Office is aware, [t]he mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. .... It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious. Further, "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Oetiker*, 977 F.2d 1443, 24 USPQ 2d 1443 (Fed. Cir. 1992) quoting *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988). Thus, Cosman fails to correct the defects in the teaching of the Reckwerdt reference for neither reference teaches creating a CT image of the patient's body and more particularly, that the image is formed from extracted skin information from the patient's body.

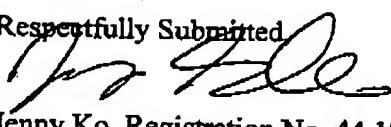
Accordingly, claims 1-16 are believed to be patentable over the cited references for at least the above reasons. Withdrawal of the rejections of claims 1-16 and allowance of claims 1-19 is therefore requested.

#### CONCLUSION

Applicant has made an earnest attempt to place this application in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests reconsideration and full allowance of all pending claims.

PLEASE MAIL CORRESPONDENCE TO: Respectfully Submitted

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